

P-421/EM-91-638 ORDER APPROVING PROMOTION, REQUIRING FILING OF
REVISED PRICE LIST AND POST-PROMOTION REPORT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Darrel L. Peterson
Cynthia A. Kitlinski
Dee Knaak
Norma McKanna
Patrice M. Vick

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of U S West
Communications, Inc.'s Plan to
Promote Residence Voice
Messaging

ISSUE DATE: August 30, 1991

DOCKET NO. P-421/EM-91-638

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PROCEDURAL HISTORY

On August 22, 1991, U S West Communications, Inc. filed notice that it planned to conduct a promotion of its Residence Voice Messaging Service (RVMS) from September 1, 1991 through October 31, 1991. USWC's filing included a price list reference sheet to appear in the Voice Messaging Service Price List during the term of the promotion.

On August 27, 1991, the Minnesota Department of Public Service (the Department) filed comments regarding USWC's promotion.

On August 27, 1991, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

USWC's Promotion of RVMS: A Price List Change Pursuant to Minn. Stat. § 237.60, Subd. 2 (1990)

USWC currently has a price list on file for its Residence Voice Message Service (RVMS). USWC's plan to promote RVMS involved advertising the availability of a \$10 credit against the \$12.25 ordering charge for RVMS. Under USWC's plan, customers who ordered RVMS during the promotion would be mailed a coupon. Customers who mailed the coupons back to USWC by December 31, 1991 would receive the credit. Customers who did not mail the coupon back to USWC by December 31, 1991 would not receive the credit.

USWC has elected pursuant to Minn. Stat. § 237.58, subd. 1 (1990) to be subject to Minn. Stat. §§ 237.58; 237.59; 237.60, subds. 1,2 and 5; 237.62; and 237.625 (1990). The listed statutes generally provide for the streamlined regulation of competitive and emergingly competitive services. RVMS is an emergingly competitive service pursuant to Minn. Stat. § 237.59, subd. 1 (1990). As to RVMS, therefore, USWC's election means that changes in RVMS are handled pursuant to Minn. Stat. § 237.60, subd. 2 (1990), the statute that governs changes in emergingly competitive services provided by telephone companies that have elected.

USWC's filing indicated that believed its promotion was governed by Minn. Stat. § 237.60, subd. 2 (d) (1990). Subdivision 2 (d) applies to changes in the terms or conditions of service in a price list that substantially change the application of the price list, but do not change the price. Unlike Subdivision 2(a) which governs decreases in rates, Subdivision 2(d) does not require a Subdivision 2(d) change be accompanied by an incremental cost study, although such a study may be required to show that the proposed change will result in rates that are non-discriminatory, fair, just, and reasonable.

In this case, it is not necessary for the Commission to decide whether USWC's promotion of this emergingly competitive service is governed by Subdivision 2 (a) or by Subdivision 2 (d). USWC has provided an incremental cost study which demonstrates that the total revenue received as a result of the promotion will exceed the total cost of providing the service, both under the terms of the company's proposed promotion and as modified by the Commission in this Order. Therefore, USWC's filing meets the requirements of both Subdivisions (a) and (d) and the effective date for the rate changes under both provisions is the same: 10 days from filing.

USWC's Promotion Violates the Non-Discrimination Provisions of Minn. Stat. § 237.09 (1990)

USWC's promotion plan has another problem, however. Minn. Stat. § 237.09 (1990) states:

No telephone company...shall, directly or indirectly, in any manner,...collect or receive from any person...a greater or less compensation for any intrastate service rendered or to be rendered than it ...collects, or receives from any other person...for a like and contemporaneous intrastate service under similar circumstances.

USWC proposes to waive \$10.00 of its \$12.25 Service Ordering Charge for all customers who apply for RVMS during the promotion period and return a coupon to it before December 31, 1991.

It is not contested that waiver of a portion of the service charge associated with providing RVMS, as proposed, effectively reduces the amount USWC collects or receives from coupon returning customers while maintaining the current service charge in full effect for all those who do not.

USWC contends that its proposed waiver plan is not prohibited by the statute because all customers who subscribe during the promotion have the same opportunity to receive the lower rate and that the actual rate customers pay is a matter of individual choice. For USWC, the circumstance of returning the coupon before December 31, 1991 is substantial and justifies collecting a lower amount from coupon returning subscribers.

In the relevant context (consumption of telephone service), however, whether a customer returns a coupon before December 31, 1991 is clearly insubstantial.¹ The statute prohibits differences in amounts collected from customers for any intrastate service if the circumstances of those customers are similar. The statute does not require customers to have identical circumstances in order to qualify for the statute's protection. In all circumstances relevant to their status as consumers of telephone service, those who subscribe to RVMS during the promotion and do not return a coupon are similar to those who do return the coupon.

For these reasons, the Commission finds that USWC's proposed waiver plan violates the non-discrimination provisions of Minn. Stat. § 237.09 (1990). Accordingly, the Commission will disapprove the selective waiver feature of USWC's promotion plan and will require USWC to provide the \$10.00 credit to all customers that subscribe to RVMS during the promotion period. USWC will be authorized to proceed with its promotion, as revised in this Order, commencing as planned on September 1, 1991, but will be required to file a revised price list reference sheet regarding the promotion. The revised price reference sheet will be consistent with this Order and be filed within 7 days of this Order. The revised price list reference sheet will appear in the Voice Messaging Service Price List during the term of the promotion.

Within 120 days following the promotion, USWC will report to the Commission and the Department. The company's report will update the projected cost data provided prior to the promotion by

¹ It appears that requiring that a customer return a coupon before receiving the \$10.00 credit may perform only one substantial function: to reduce the number of persons who will actually receive the advertised \$10.00 credit. USWC's filing indicates that it anticipates a low coupon return rate.

providing actual data regarding the promotion. This data will include actual numbers of additional Residence Voice Messaging units sold and the actual revenue and expenses experienced. The report will also include representative advertising done in connection with the promotion.

ORDER

1. U S West Communications, Inc.'s plan to promote its Residence Voice Message Service (RVMS), as amended by this Order, is approved. The promotion is authorized to run beginning September 1, 1991 through October 31, 1991.
2. USWC's plan to promote its Residence Voice Message Service (RVMS) is amended as follows: USWC shall give \$10.00 credit to all customers that subscribe to RVMS during the promotion period.
3. All advertising of the promotion shall describe the promotion as amended in this Order.
4. Within 7 days of this Order, USWC shall file a revised price list reference sheet consistent with this Order which shall appear in the Voice Messaging Service Price List during the remaining term of the promotion.
5. Within 120 days of the termination of October 31, 1991, the final day of this promotion, USWC shall file with the Commission and the Department a report regarding the promotion. USWC's report shall update the projected cost data provided prior to this promotion by providing actual data regarding the results of the promotion. This data shall include actual numbers of additional Residence Voice Messaging units sold and the actual revenue and expenses experienced. The report shall also include representative advertising done in connection with the promotion.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

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